

Safety belt & drunk driving enforcement take center stage in new fiscal year

Efforts to increase safety belt use and reduce drunk driving in the state will revolve around four national enforcement mobilizations in the new fiscal year, beginning October 1, 2002, and concluding September 30, 2003.

OHSP will seek to maximize law enforcement agency participation in these national mobilizations, which take place in November, December, May and July. In November and May, the focus will be safety belt enforcement. In December and July, enforcement will target drunk drivers.

"Nationally, we are seeing tremendous results from states with high participation from their local police agencies taking a zero tolerance approach to unbuckled motorists," said Betty J. Mercer, OHSP division director. "We have every reason to believe we can be equally successful in Michigan."

Plans will include law enforcement challenges for each mobilization, substantial publicity in the form of both earned and paid media activities as well as support from traffic safety partners around the state.

"Higher belt use is both realistic and attainable," Mercer added. "We are committed to putting the



resources necessary behind these efforts to achieve positive results."

Watch the OHSP website for information and details throughout the next year. Information is available at www.michigan.gov/msp (Services to Governmental Agencies).



Traffic fatalities down in 2001

Traffic fatalities in Michigan decreased by 4 percent in 2001. The drop, from 1,382 in 2000 to 1,328 the following year was coupled with a 6 percent drop in auto-related crashes.

Governor Engler credited the new state law allowing officers to stop and ticket motorists solely for not wearing a seatbelt and the state's confiscation of license plates

from repeat drunk drivers as having "made Michigan roadways a safer place as a result, and lives are being saved."

The data, compiled by the Michigan State Police's Criminal Justice Information Center, also showed alcohol and drug-related deaths decreasing 2.5 percent in 2001 (and 21 percent over the last 10 years). Deer-vehicle crashes, however, increased 3.1 percent to 66,933, with eight motorists killed and 2,109 injuries.

Fatalities in Wayne County increased 3.5 percent to 238, while those in Oakland County remained the same at 97 and Kent County saw a 12.1 percent dip to 58.

DIRECTOR'S CORNER

BETTY J. MERCER

Division Director, Office of Highway Safety Planning

It's always heartening to report that fatalities have decreased. That's just the case for the year 2001, when fatalities went down from 1,382 in 2000 to 1,328 in 2001. That's a 4 percent drop.

Just what's behind the drop is hard to pinpoint. We can surmise it's largely the result of recent legislative changes. We can probably attribute the bulk of the drop to the increase in safety belt use. In 2001, Michigan's safety belt use rate stood at 82.3 percent. That's much higher than the belt use when the state had a secondary enforcement law—70 percent.

However, to keep this trend of decreasing fatalities, we are going to have to work to increase the stagnant belt use number:

less than half of the 1,328 killed last year in traffic crashes were belted. National studies show that 3 of 5 victims from these crashes would have likely survived if they had buckled up.

Since the standard enforcement belt law went into effect in March 2000, our state's belt use has gone from 83.5 percent to 82.3 percent to 80 percent. Other states that have enacted standard enforcement have not only seen the initial increase in belt use that Michigan did, but also have been able to maintain and oftentimes escalate the number further.

It will take continued publicity and consistent, high-visibility enforcement of the law to maintain our safety belt use rate and improve upon it. Motorists must believe they will receive a ticket if they choose to ride unbuckled in their community. Consistent enforcement of the law increases safety belt use, decreases the likelihood of fatalities and injuries and sends the message that buckling up is important.



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Plans for releasing 2001 Crash Facts

The distribution, availability and format of the state's annual crash facts are important to multiple public and private organizations to assist in traffic safety planning. In past years, a two-part book (statewide and community) was produced and mailed to those interested parties. In addition crash facts can be viewed via a web page maintained by the University of Michigan Transportation Research Institute. Starting with year 2000 data, a condensed Crash Facts book was produced along with a CD containing that information in addition to many other charts and tables.

For year 2001 crash facts, a condensed book, CD and web access will again be offered. CDs will only be mailed on request. Improvements to the format and accessibility of the information are being explored. Enhanced reproduction methods including hard and soft copy capabilities are also being reviewed. A late 2002 release date for the web version of the 2001 crash facts is expected.

GTSAC Intersection Safety ad hoc Task Force Formed

The Governor's Traffic Safety Advisory Commission (GTSAC) has identified intersection safety as a key component to reducing the number of fatal and serious injury vehicle crashes. At the recommendation of the GTSAC, an Intersection Safety Ad Hoc Committee (ISC) has been formed. The ISC has been meeting on a monthly basis since June 2002 to address intersection safety.

The first goal of the ISC was to formulate an action plan. This action plan consists of background information, problem identification, activities, data and timelines all aimed at addressing intersection safety. The action plan is based on the National Agenda for Intersection Safety guidebook produced by the American Association of State Highway and Transportation Officials (AASHTO). Once this action plan has been finalized, a project manager will be hired to communicate and implement the plan. Future goals of the ISC are being formulated and will be communicated when they are finalized. For more information, contact OHSP's Steve Schreier at (517) 333-5306 or schreies@michigan.gov.

Plans for “Drive Safely Work Week”

Michigan employers are encouraged to participate in Drive Safely Work Week (DSWW) from October 7–11, 2002. By taking an active role in this campaign, an organization demonstrates their commitment to improving the safety and health of their employees by emphasizing the importance of driving safely both on and off the job. The DSWW campaign is sponsored each year by the Network of Employers for Traffic Safety (NETS) to reduce traffic related deaths and injuries within the nation’s workforce.

Drive Safely Work Week 2002 addresses drowsy, distracted, alcohol impaired and aggressive driving—the risky driving behaviors often associated with the “roads more traveled.” With the nation’s roadways becoming more congested, with drivers experiencing anxiety, stress, fatigue, and numerous personal and work-related distractions, it is increasingly important for the American business community to make traffic safety a priority.

This year’s DSWW campaign—**drive focused. stay safe**—helps employees steer clear of risky driving behaviors. The campaign also drives home the message that safety belts are the best protection against



their own risky driving behaviors and those drivers who share the road with them. A campaign tool kit is available with everything an employer or community needs. The tool kit has resources and activities to make it simple for you to implement a memorable and effective campaign, including fact sheets filled with information and traffic safety tips on key campaign issues, a sample newsletter article for company publications, a campaign poster to display at your

place of business, camera-ready artwork to customize your campaign, a CD-ROM to make participation easier than ever and a catalogue of other products and incentives. These materials are not dated and may be used throughout the year to promote safety.

Michigan NETS will subsidize the \$25 cost of the campaign tool kit so that for just \$15, Michigan employers can improve employee relations and enhance safety while having a positive impact on their bottom line. To receive the \$10 discount off the full price, order a tool kit today by calling (888) 221-0045. Only the first kit for multiple orders will be discounted. For more information, contact OHSP’s Dan Vartanian at (517) 333-5322 or vartanid@michigan.gov.

NHTSA announces new recommendation on when children should use booster seats

To help make it easier for parents and caregivers to keep children safe, the National Highway Traffic Safety Administration (NHTSA) issued a new recommendation on when to use a booster seat. NHTSA recommends that all children who have outgrown child safety seats should be properly restrained in booster seats until they are at least 8 years old, unless they are at least 4’9” tall.

The recommendation is based on an exhaustive review of available literature regarding various physical characteristics of growing children, an array of real world seat belt and booster seat performance variables and a host of public opinion research efforts.

According to Dr. Jeffrey W. Runge, NHTSA administrator, “If every parent and every state legislature will heed these recommendations, we will see a stunning decrease from the 500 children in this age group who die each year.”

For more information about child passenger safety in Michigan, please contact the Michigan Department of Community Health’s Angela Glew at (517) 335-9420 or Heather Hockanson at (517) 335-9519.





July 4th Enforcement captured on video

Over two hundred drunk drivers were arrested as part of the July 4th *You Drink & Drive. You Lose.* statewide mobilization. The Drive Michigan Safely Task Force (DMSTF) conducted 4,994 patrol hours and stopped 5,556 vehicles, resulting in 57 felony arrests, 392 misdemeanor arrests and 1,434 speed citations.

The *You Drink & Drive. You Lose.* program is one component of the DMSTF's goal of reducing alcohol-related traffic crashes and increasing seat belt usage. DMSTF counties receive special federal funding from OHSP to conduct overtime enforcement of traffic laws.

A news conference was held July 1 to publicize the holiday enforcement and the purchase of over 100 in-car video cameras by OHSP for installation in Michigan State Police vehicles. The cameras assisted law enforcement officers during their *You Drink & Drive. You Lose.* enforcement efforts over the July 4th holiday.

To promote this campaign, OHSP conducted our increasingly popular equipment incentive program for law enforcement agencies. The law enforcement challenge provided agencies that participated during the national July 4th mobilization with an opportunity to be entered into a random drawing to win an in-car video camera or a passive alcohol sensor. Fifteen in-car video cameras and eleven passive alcohol sensors were awarded to agencies that submitted challenge entry forms indicating their enforcement activities during the mobilization.

The winners of the in-car video cameras were the Antrim County Sheriff Department, Branch County Sheriff Department, Clinton County Sheriff Department, Hazel Park Police Department, Kalkaska County Sheriff Department, Lake Linden Police Department, Mackinaw City Police Department, Michigan State Police Jonesville, Kalkaska, and Stephenson posts, Midland Police Department, Onaway Police Department, Saginaw County Sheriff Department, Southfield Police Department and West Branch Police Department.

The winners of the passive alcohol sensors were the Bloomfield Township Police Department, Eaton County Sheriff Department, Forsyth Township Police Department, Ishpeming Police Department, Michigan State Police Adrian, Bridgeport, Brighton and Lansing posts, Michigan State University Department of Public Safety, Oakland County Sheriff Department, and Washtenaw County Sheriff Department.

Special thanks to all of the law enforcement agencies that participated in the mobilization and congratulations to all of the law enforcement challenge winners.

Liquor Commission launches new teen drinking campaign

Liquor stores and bars have always been under the threat of undercover police or teens working for them trying to purchase alcohol. But they could now also face that threat from average citizens. The Liquor Control Commission launched a new pilot program in Lansing, "We All Lose When Kids Buy Booze!" that encourages people to report liquor licensees who sell to minors.

"This is an effort to discourage underage drinking and sales to minors," said Commission Chair Dan Gustafson. "We think this campaign will support industry and other efforts to decrease teen alcohol use. We want to increase the peer pressure on parents, irresponsible vendors and teens by driving home the point that we all lose when kids buy booze."

The program will pilot in the Lansing/Jackson market with television, radio and billboard ads asking people to report the illegal sales. The program hopes to eventually move statewide.

The commission is accepting complaints through the program by phone at (866) 893-2121 or on the Internet at www.reportunder21.com.

Status of Traffic Records Redesign Project

In August 2001, a one-week planning session (TRANSTIP) was held to review and make recommendations for the update of the current crash system. A full-time project manager, Jack Benac from the Michigan Department of Transportation, was assigned in May 2002 to facilitate, organize and implement enhancements/updates to the crash system, using the TRANStip document as a guide.

A core team designated by the Executive Committee of the Traffic Records Coordinating Committee, has identified a project sponsor, received executive commitment and approvals to proceed with the project, engaged vendors to host requirements sessions for both process and technology discussions, established high level goals, objectives and timelines and secured funding resources.

It is expected that a Phase I release will occur in late 2003 consisting of a 'mainframe to client/server' move of the crash data from MSP to MDOT. Future upgrades and enhancements, including improved electronic data processing, real time information accessibility and mobile data entry, are anticipated in the next two years. For more information, contact Jack Benac at (517) 335-2975 or benacj@michigan.gov.



Motorcycle Helmets: Do We Have to Wear Them?

Several challenges to Michigan's motorcycle helmet law have created a misconception about the legal requirements to wear a helmet. A motorcyclist in Michigan has been and continues to be required to wear a D.O.T.-approved motorcycle helmet on his or her head when operating or riding as a passenger on a motorcycle. This applies to all highways, roads, streets, and other thoroughfares in Michigan.

Previous court challenges to this law were based upon a perceived technical flaw in the old administrative rule that dealt with what types of helmets were approved, not if a helmet needed to be worn. On July 27, 2000, a new administrative rule took effect that rectified this issue. However the challenges have not stopped. Recent motions filed in District Court are raising the same issues.

MCL 257.658(4) states in part: A person operating or riding on a motorcycle. . . shall wear a crash helmet on his or her head. Crash helmets shall be approved by the Department of State Police. The Department of State Police shall promulgate rules for the implementation of this section.

What's It All About?

The defendant's argument has been that the State Police have not approved any specific helmets, therefore they have not complied with MCL 257.658 which requires the department to "approve" the crash helmet. What they expect is that the State Police would take a look at each make and model of helmet to decide which are okay and which are not.

However, the administrative rules the State Police filed in July of 2000 are not that specific. They provide that a helmet must meet all of the requirements of the Federal Motor Vehicle Safety Standard before it can be legally worn in Michigan.

Case Law

Since the change in 2000, almost all courts in Michigan have upheld the law. As noted by one court: "while the statute (MCL 257.658(4), requires the MSP to approve crash helmets, the language does not necessarily require that the MSP compile a list of approved helmets. The Court also notes that the MSP is not required by statute to do any actual testing of helmets." *People v Nichols*, Opinion dated October 19, 2001, 81st District Court, Case No. 01-430736-ST.

In the case of *People v Mastrogiovanni*, the court noted "It would be almost an impossible undertaking

to require the State Police to compile a potentially exhaustive list of specific manufacturer's helmets that meet their satisfactions and to amend the Rule each time helmets are added to and/or removed from the market. Instead the Rule spells out the requirement of an 'approved' helmet by identification or certain physical features of the helmet and specifically by simply looking for a DOT certification symbol." Opinion dated April 5, 2001, 52-3 District Court, Case No.: 00-010596.

Finally, from the case of *People v Rockland Marshall*, a motorcyclist who doesn't wear a helmet, can't challenge MCL 257.658(4). There the defendant was ticketed for operating a motorcycle without a helmet. He convinced the circuit judge that the statute was unconstitutionally vague. The prosecutor appealed to the Court of Appeals and they reversed in short order. They stated: "A defendant has standing to challenge a statute as vague only if it is vague as applied to his conduct. . . . Here, defendant Marshall lacked standing to challenge for vagueness either MCL 257.658(4) or its corresponding administrative rule, R 28.951, where his operation of a motorcycle without any helmet clearly fell within the statute's prohibitions." *People v Rockland Marshall*, (Unpublished) CA No. 237937, January 24, 2002.

Safety Matters

Will a motorcycle helmet really help save a life in a crash? The statistics say yes. A non-helmeted motorcyclist is 40 percent more likely to incur a fatal head injury than a helmeted motorcyclist in a similar crash. And of course there is the greater public interest in that increased medical cost resulting in increased medical premiums is passed onto the consumer. However, the bottom line is that motorcycle helmets are a legal requirement in Michigan.

New Case Law

In other matters, the Michigan and Texas drunk driving laws are "substantially corresponding" laws within the meaning of MCL 257.625(23) therefore, defendant's Texas DWI conviction constituted a prior conviction supporting defendant's bind over on the charge of OWI, second offense. The court concluded although the two statutes employed different words, they were "substantially corresponding" since it was clear each of the statutes used similar subjective criteria to prohibit similar conduct, namely, drunk driving.

Continued on next page.

Motorcycle Helmets

Continued from previous page.

Both statutes also set forth identical blood alcohol thresholds, measured in identical ways, as an objective method of proving a violation. MCL 257.625(23) requires the other state's law "substantially correspond" to a Michigan law, not that it be an identical match. *People v Wolfe*, CA No. 234940, May 10, 2002.

Consult Your Prosecutor Before Adopting Practices Suggested by Reports in this Article.

The statutes and court decisions in this article are reported to help you keep up with trends in the law. Discuss your practices that relate to these statutes and cases with your commanding officers, police legal advisors, and the prosecuting attorney, before changing your practices in reliance on a reported court decision or legislative change.

Governor Signs Segway Scooter Bill

A bill allowing Michigan residents to operate the Segway electric personal scooter, once they are available, was signed by Governor John Engler in July. The bill, SB 1016 (PA 494), took immediate effect, defines the "electric personal assistive mobility device" and allows counties and municipalities to regulate the use of the scooter on their sidewalks and crosswalks.

Drunken Driving not 'willful and wanton'

In a unanimous opinion, the Appeals Court ruled that a person driving drunk is not acting in a "willful and wanton" manner and is therefore not liable for damage that occurred during a crash under his no-fault auto insurance plan.

In the civil case, Donald York, after spending several hours drinking and determining that he could no longer drive home, telephoned his wife requesting that she pick him up. Subsequently changing his mind and driving home, Mr. York ran a stop sign and crashed into an ambulance carrying crash victims. The ambulance's insurance company was suing Mr. York's for \$61,000 to cover the costs of damage done to the vehicle.

Saying that Mr. York's policy only provides tort exemptions when the crash is a result of "willful and wanton" actions, which Judges David Sawyer, Donald Owens and Jessica Cooper said the Insurance Code of 1956 defines as "intentional," the court ruled that Mr. York's insurance company is not liable for the damages.

"While the evidence establishes that defendant exercised poor judgment in deciding to drive after consuming an immoderate amount of alcohol over several hours, particularly in light of the fact that he had made arrangements for his wife to pick him up and thereafter abandoned that plan," wrote Mr. Sawyer, "there is no indication that defendant intended to cause the harm which occurred."

The ruling from (in *American Alternative Insurance v. Farmers Insurance and York*, COA docket No. 227917) overturned a Shiawassee Circuit Court ruling to the contrary.

Memorial Day Law Enforcement Challenge Update

To promote the Memorial Day *Click it or Ticket* mobilization, OHSP conducted an equipment incentive program for law enforcement agencies that participated during the May 24-27 national mobilization weekend.

During the four days of Memorial Day weekend, 468 agencies participated in safety belt enforcement activities. Of those 468 agencies, 185 agencies provided enforcement statistics to OHSP. There were 85 citations written for an unrestrained child under 4 years of age; 182 citations for an unrestrained child 4-16; and 5,463 citations issued to adults who were not buckled up. In addition, there were 4,254 citations issued for speed violations, 91 felony arrests, and 796 misdemeanor arrests.

A random drawing was held to award six lasers to eligible participating law enforcement agencies. The winners include the Ann Arbor Police Department, Branch County Sheriff Department, Manistee City Police Department, Michigan State Police Paw Paw Post, Plainwell Department of Public Safety, and the Sunfield Police Department.

OHSP also awarded 28 light kits, which can be used at crashes to ensure motorists can see the scene. The winners include: Adrian City Police Department, Bay County Sheriff Department, Burton Police Department, Cheboygan Department of Public Safety, Cheboygan Sheriff Department, Clare County Sheriff Department, Clinton County Sheriff Department, Clinton Township Police Department, Dewitt Township Police Department, Grosse Ile Police Department, Livingston County Sheriff Department, Mackinaw City Police Department, Macomb County Sheriff Department, Marquette City Police Department, Mattawan Police Department, Meridian Township Police Department, Michigan State Police Flint Post, Michigan State Police Houghton Lake Post, Michigan State Police Lapeer Post, Michigan State Police Petoskey Post, Michigan State Police St. Ignace Post, Midland Police Department, Oceana County Sheriff Department, Onaway Police Department, Ottawa County Sheriff Department, Saugatuck-Douglas Police Department, Taylor Police Department, and West Bloomfield Township Police Department.

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